

L4G1JANP

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

19 Cr. 818 (PGG)

6 JAVIER JANIEL,

7 Defendant.

Remote Plea

8 April 16, 2021  
9:34 a.m.

10 Before:

11 HON. PAUL G. GARDEPHE,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS

15 United States Attorney for the  
Southern District of New York

16 BY: DOMINIC A. GENTILE  
Assistant United States Attorney

17 LAW OFFICE OF EVANS D. PRIESTON

18 Attorney for Defendant

BY: EVANS D. PRIESTON, ESQ.

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1 (Case called)

2 THE DEPUTY CLERK: Counsel for the government, please  
3 state your appearance.

4 MR. GENTILE: Good morning, your Honor. Dominic  
5 Gentile for the United States.

6 THE DEPUTY CLERK: Counsel for defendant, please state  
7 your appearance.

8 MR. PRIESTON: My name is Evans Prieston appearing on  
9 behalf of Javier Janiel.

10 THE DEPUTY CLERK: And Mr. Janiel, you're on the line  
11 with us, correct?

12 THE DEFENDANT: Correct.

13 THE DEPUTY CLERK: Thank you.

14 THE COURT: This matter is on my calendar for purposes  
15 of conducting a plea hearing. I am conducting this proceeding  
16 telephonically pursuant to the authority provided by  
17 Section 15002 of the Coronavirus Aid, Relief, and Economic  
18 Security Act -- commonly referred to as the CARES Act -- as  
19 well as certain standing orders issued by the Chief Judge. The  
20 CARES Act expands the ability of judges in criminal proceedings  
21 to use videoconferencing, or teleconferencing where  
22 videoconferencing is not reasonably available. However, felony  
23 guilty pleas may proceed by teleconference only with the  
24 consent of the defendant after consultation with counsel.

25 On March 11, 2021, the Chief Judge of this district

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1 entered a standing order authorizing the use of  
2 videoconferencing, or teleconferencing where videoconferencing  
3 is not reasonably available, for various criminal proceedings,  
4 including guilty pleas. Rule 43(a) of the Federal Rules of  
5 Criminal Procedure provides that a defendant must be present at  
6 his guilty plea. The defendant may appear at a Rule 11  
7 proceeding by teleconference, however, if he consents.

8 In the context of this case, I find that the  
9 defendant's plea proceeding cannot be further delayed without  
10 serious harm to the interests of justice. The defendant was  
11 arrested back in November of 2019.

12 I also find, based on my understanding of this  
13 district's current technical capabilities, that  
14 videoconferencing is not readily available and that a  
15 teleconference is preferable under the circumstances.

16 Mr. Janiel, have you spoken with Mr. Prieston about  
17 having your guilty plea today proceed by way of teleconference?

18 THE DEFENDANT: Yes, I have.

19 THE COURT: And Mr. Janiel, you understand that you  
20 have a right to be physically present in a courtroom for  
21 purposes of your guilty plea?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Do you understand that, sir?

24 THE DEFENDANT: Yes.

25 THE COURT: But my understanding is that you have

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1 agreed to have your guilty plea proceed today by way of  
2 teleconference; is that true?

3 THE DEFENDANT: Yes, I agree.

4 THE COURT: And Mr. Prieston, do you consent to these  
5 proceedings going forward today by way of teleconference?

6 MR. PRIESTON: Yes, your Honor.

7 THE COURT: I find that the defendant has knowingly  
8 and voluntarily waived his right to have his guilty plea  
9 proceed in a courtroom and instead we will proceed today by way  
10 of teleconference.

11 Before proceeding further, I will address the recent  
12 amendment to Rule 5 of the Federal Rules of Criminal Procedure.  
13 As required by Rule 5(f), I direct the government to comply  
14 with its obligations under *Brady v. Maryland* and its progeny to  
15 disclose to the defense all information, whether admissible or  
16 not, that is favorable to the defendant, material either to  
17 guilt or to punishment, and known to the government. Possible  
18 consequences for noncompliance with this order may include  
19 dismissal of charges against the defendant, exclusion of  
20 evidence, and professional discipline or court sanctions on the  
21 attorneys responsible.

22 I have entered a written order that more fully  
23 describes the government's obligations and the possible  
24 consequences of failing to meet those obligations. I direct  
25 the government to review and comply with that order.

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1 Mr. Gentile, does the government confirm that it understands  
2 its obligations and will fulfill them?

3 MR. GENTILE: This is Dominic Gentile for the  
4 government, Judge. Yes, the government is aware of the Court's  
5 order and has complied and will continue to comply with its  
6 obligations under *Brady v. Maryland* and its progeny.

7 THE COURT: We will now proceed to the guilty plea.

8 I am told, Mr. Prieston, that the defendant wishes to  
9 plead guilty to a lesser included offense of Count One of the  
10 indictment -- specifically, a (b) (1) (C) violation; is that  
11 true, Mr. Prieston?

12 MR. PRIESTON: Yes, Judge.

13 THE COURT: Mr. Ruocco, would you please swear in the  
14 defendant.

15 THE DEPUTY CLERK: Yes, your Honor.

16 (Defendant sworn)

17 THE COURT: Mr. Janiel, you should understand that  
18 you're now under oath, and if you answer any of my questions  
19 falsely, your answers may later be used against you in another  
20 prosecution for perjury or for making a false statement. Do  
21 you understand that, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: I have been given an Advice of Rights form  
24 that appears to have been signed by the defendant and his  
25 attorney. Mr. Janiel, do you recall signing the Advice of

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1 Rights form?

2 THE DEFENDANT: Recall?

3 THE COURT: Yes. It's a form that advises you of your  
4 rights in connection with pleading guilty. It's a two-page  
5 form, and I have a copy of it, and it appears to have been  
6 signed by you on or about March 3rd of this year, so it was  
7 awhile back, but I have a form bearing your signature, or what  
8 appears to be your signature, and the date of March 3, 2021.

9 THE DEFENDANT: Yeah, yeah, yeah, that's -- yeah,  
10 that's me.

11 THE COURT: Okay. I will mark the Advice of Rights  
12 form as Exhibit 1 to these proceedings.

13 I've also been given a plea agreement that appears to  
14 have been signed by Mr. Janiel, by his attorney, and by  
15 representatives of the U.S. Attorney's Office.

16 Mr. Janiel, do you recall signing the plea agreement  
17 in this case? It's a seven-page document --

18 THE DEFENDANT: Yes, sir.

19 THE COURT: -- that I have in front of me. Do you  
20 remember that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Okay. I will mark the plea agreement as  
23 Exhibit 2 to these proceedings.

24 Before deciding whether to accept your guilty plea,  
25 Mr. Janiel, I am required to ask you certain questions. It's

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1 important you answer these questions honestly and completely.  
2 The purpose of these proceedings is to make sure that you  
3 understand your rights and for me to make certain that you're  
4 pleading guilty of your own free will, to make sure that you  
5 are pleading guilty because you are in fact guilty, and not for  
6 some other reason. Do you understand that, sir?

7 THE DEFENDANT: Yes, correct.

8 THE COURT: If you don't understand any of my  
9 questions or you want to consult with Mr. Prieston at any time,  
10 please say so, because it is important that you understand  
11 every question before you answer.

12 THE DEFENDANT: All right.

13 THE COURT: Mr. Janiel, could you give us your full  
14 name for the record.

15 THE DEFENDANT: Janiel Javier.

16 THE COURT: All right. So your name is actually  
17 Janiel Javier. Javier is actually your last name.

18 THE DEFENDANT: Yeah, Javier is actually my last name.  
19 I have a middle name, Enrique.

20 THE COURT: So your full name is Janiel Enrique  
21 Javier.

22 THE DEFENDANT: Correct, your Honor.

23 THE COURT: Okay. So I'm going to address you as  
24 Javier throughout.

25 Mr. Javier, how far did you go in school?

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1           THE DEFENDANT: I had went like up to, um, junior.

2           THE COURT: Junior year in high school?

3           THE DEFENDANT: Yeah, junior, 11th grade in high  
4 school, correct.

5           THE COURT: Okay. Mr. Javier, have you ever been  
6 addicted to any drugs or alcohol or been treated for any  
7 addiction?

8           THE DEFENDANT: Yes, correct.

9           THE COURT: Are you currently experiencing any  
10 symptoms associated with prior use of drugs or alcohol?

11          THE DEFENDANT: I mean, I already surpassed the -- the  
12 addiction during my time incarcerated.

13          THE COURT: Okay. So you're not currently  
14 experiencing any symptoms associated with that prior addiction.

15          THE DEFENDANT: No.

16          THE COURT: Mr. Javier, are you now or have you  
17 recently been under the care of any kind of a doctor?

18          THE DEFENDANT: Like in -- what you mean by that, your  
19 Honor?

20          THE COURT: Well, I'm asking if you're currently being  
21 treated by any sort of doctor or physician, medical personnel,  
22 for any sort of condition.

23          THE DEFENDANT: I mean, not -- no, not really.

24          THE COURT: Okay. In the past 24 hours have you taken  
25 any drugs, medicine, or pills, or drunk any alcohol?

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1                   THE DEFENDANT: No, your Honor.

2                   THE COURT: Is your mind clear today and do you  
3 understand what is happening?

4                   THE DEFENDANT: Yes, your Honor.

5                   THE COURT: Mr. Prieston, do you have any doubt as to  
6 Mr. Javier's competence to plead guilty this morning?

7                   MR. PRIESTON: No.

8                   THE COURT: On the basis of Mr. Javier's responses to  
9 my questions, I find that he's competent to enter an informed  
10 plea.

11                  Mr. Javier, have you had enough time to discuss your  
12 case with your attorney?

13                  THE DEFENDANT: Yes, I have.

14                  THE COURT: Have you discussed with him the charge  
15 against you as well as your intention to plead guilty to the  
16 lesser included offense that I mentioned?

17                  THE DEFENDANT: Yes, I have.

18                  THE COURT: Have you discussed with him any possible  
19 defenses you might have to that charge as well as all the facts  
20 about your involvement in this matter?

21                  THE DEFENDANT: Yes, I have.

22                  THE COURT: And has Mr. Prieston told you about the  
23 consequences of pleading guilty?

24                  THE DEFENDANT: Yes, he has.

25                  THE COURT: And are you satisfied with Mr. Prieston's

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1 representation of you?

2 THE DEFENDANT: Yes, I am, your Honor.

3 THE COURT: I now must explain certain constitutional  
4 rights that you have. These are rights you'll be giving up if  
5 you enter a guilty plea. Please do listen carefully to what  
6 I'm about to say. If you don't understand something, stop me,  
7 and either myself or Mr. Prieston will explain the matter to  
8 you more fully.

9 Under the Constitution and laws of the United States,  
10 you have a right to a speedy and public trial by a jury on the  
11 charge against you contained in the indictment. Do you  
12 understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: If there were a trial, you would be  
15 presumed innocent, and the government would be required to  
16 prove your guilt by competent evidence and beyond a reasonable  
17 doubt. You would not have to prove you were innocent at a  
18 trial. Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: If there were a trial, a jury composed of  
21 12 people selected from this district would have to agree  
22 unanimously before you could be found guilty. Do you  
23 understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: If you decided to go to trial, at that

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1 trial and at every stage of your case, you would have the right  
2 to be represented by an attorney, and if you could not afford  
3 one, an attorney would be appointed to represent you at  
4 government expense and at no cost to you. If you retained a  
5 lawyer and you ran out of money, an attorney would be appointed  
6 to continue to represent you and to handle your case all the  
7 way through trial and not just for purposes of a guilty plea.  
8 So your decision to plead guilty should not depend on whether  
9 you can afford a lawyer. Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: If there were a trial, you have the right  
12 to see and hear all the witnesses against you, and your  
13 attorney could cross-examine them. You'd have a right to have  
14 your attorney object to the government's evidence, to offer  
15 evidence on your behalf, if you so desired. You'd have the  
16 right to have subpoenas issued to compel witnesses to testify  
17 in your defense. Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: If there were a trial, you'd have the  
20 right to testify if you wanted to, but no one could force you  
21 to testify if you did not want to. Furthermore, no inference  
22 or suggestion of guilt could be drawn if you chose not to  
23 testify at a trial. Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: If you were convicted at a trial, you

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1 would have the right to appeal that verdict to a higher court.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Even now as you're entering this plea, you  
5 have the right to change your mind, plead not guilty, and go to  
6 trial on the charge contained in the indictment. Do you  
7 understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: If you plead guilty and I accept your  
10 plea, you will give up your right to a trial and the other  
11 rights I just mentioned, other than the right to a lawyer,  
12 which you have regardless of whether or not you plead guilty.  
13 If you plead guilty, I will enter a judgment of guilty and  
14 sentence you on the basis of your plea, after I have considered  
15 a presentence report and whatever submissions I receive from  
16 your lawyer and the government. Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: If you plead guilty, you will have to give  
19 up your right not to incriminate yourself because I will ask  
20 you questions about what you did in order to satisfy myself  
21 that you are guilty as charged, and you will have to admit and  
22 acknowledge your guilt. Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: As I told you a moment ago, you are  
25 pleading guilty to a felony offense of violating 21 United

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1 States Code Section 846 and 841(b)(1)(C). Those provisions  
2 make it unlawful to conspire to distribute and possess with  
3 intent to distribute cocaine base -- commonly known as crack --  
4 as well as powder cocaine.

5 The government would have to prove at trial these  
6 elements of the offense beyond a reasonable doubt:

7 First, the government would have to prove the  
8 existence of a conspiracy alleged in the indictment -- in other  
9 words, that at some point between April 2019 and November 2019,  
10 there was in fact an agreement or understanding between two or  
11 more people to violate those provisions of the law that make it  
12 a crime to distribute cocaine base and cocaine or to possess  
13 cocaine base and cocaine with the intent to distribute them;

14 Second, the government would have to prove that you  
15 knowingly became a member of that conspiracy -- that is, that  
16 you knowingly associated yourself with the charged conspiracy  
17 and participated in that conspiracy to distribute cocaine base  
18 and cocaine and to possess cocaine base and cocaine with the  
19 intent to distribute them.

20 Mr. Javier, do you understand that these are the  
21 elements of the offense that you're pleading guilty to?

22 THE DEFENDANT: Yes, I do, your Honor.

23 THE COURT: I will now tell you the maximum and any  
24 minimum possible penalty for this crime. The maximum means the  
25 most punishment that could possibly be imposed, it does not

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1 necessarily mean that is what you will receive, but you have to  
2 understand that by pleading guilty, you are exposing yourself  
3 to the possibility of receiving any combination of punishment  
4 up to the maximum I am about to describe. Do you understand  
5 that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: The crime to which you are pleading guilty  
8 carries a maximum sentence of 20 years' imprisonment. The  
9 sentence could be followed by a maximum of lifetime supervised  
10 release and will be followed by at least a mandatory minimum  
11 term of three years' supervised release.

12 Supervised release means that if you are sentenced to  
13 prison, after you are released from prison, you will be subject  
14 to supervision by the U.S. Probation Office. There will be  
15 rules of supervised release that you will have to follow, and  
16 if you violate those rules, you can be returned to prison  
17 without a jury trial to serve additional time even beyond your  
18 original sentence.

19 In addition, the crime to which you are pleading  
20 guilty carries a maximum fine of the greatest of \$1 million,  
21 twice the gross pecuniary gain derived from the offense, or  
22 twice the gross pecuniary loss resulting from the offense.

23 Parole has been abolished in our federal system, and  
24 if you are sentenced to prison, you will not be released early  
25 on parole. There is a limited opportunity to earn credit for

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1 good behavior, but you will have to serve at least 85 percent  
2 of the time you are sentenced to. Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: There is also a mandatory minimum fine, or  
5 special assessment, of \$100 that I am required to impose. Do  
6 you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: As part of your sentence, I have the power  
9 to order you to make restitution to anyone who was injured as a  
10 result of your criminal conduct, and I can also order you to  
11 forfeit certain property to the government. Do you understand  
12 that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Being convicted of a felony may have other  
15 consequences, such as the loss of licenses or of the right to  
16 possess a firearm. If you are a citizen of the United States,  
17 you could lose your right to vote. If you're not a citizen of  
18 the United States, you will lose any right you might have to  
19 remain in the United States, and you will be deported after  
20 serving your sentence. This is not a full list of the  
21 consequences of a felony conviction; these are only examples.  
22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: There are sentencing guidelines I'm  
25 required to consult in determining an appropriate sentence in

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1 your case. Have you spoken with Mr. Prieston about the  
2 sentencing guidelines?

3 THE DEFENDANT: Yes, I have, your Honor.

4 THE COURT: You should understand that I will not be  
5 able to determine what the guidelines recommend until after a  
6 presentence report has been prepared by the probation office  
7 and your lawyer and the prosecutor have had a chance to  
8 challenge the facts as set forth by the probation office. Do  
9 you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: You should also understand that after I  
12 determine what the guidelines range is and considered whether a  
13 departure, either upwards or downwards, from the guidelines  
14 range is called for, I will then determine what an appropriate  
15 sentence is in your case, having in mind not only the  
16 sentencing guidelines but all of the factors set forth in the  
17 sentencing statute, including the need for the sentence imposed  
18 to reflect the seriousness of your offense, the need to promote  
19 respect for the law, to provide just punishment, and to afford  
20 adequate deterrence to criminal conduct. Do you understand  
21 that?

22 THE DEFENDANT: Yes, I understand, your Honor.

23 THE COURT: You should understand that if your  
24 attorney or anyone else has attempted to estimate or predict  
25 what your sentence will be, their estimate or prediction could

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1 be wrong. Do you understand that?

2 THE DEFENDANT: Yes. Yes, I understand, your Honor.

3 THE COURT: No one, not even your attorney or the  
4 prosecutor, can give you any assurance of what your sentence  
5 will be. Your sentence cannot be determined until the  
6 presentence report is prepared and I have ruled on any  
7 objections to the report, determined whether I believe there  
8 are grounds to depart upwards or downwards from the guidelines  
9 range, and otherwise determined what an appropriate sentence is  
10 in your case. Do you understand that?

11 THE DEFENDANT: Yes, I understand, your Honor.

12 THE COURT: You should fully understand that even if  
13 your sentence is different from what your attorney or anyone  
14 else told you it might be, or if it is different from what you  
15 expect, you will still be bound by your guilty plea and you  
16 will not be allowed to withdraw your plea of guilty. Do you  
17 understand that?

18 THE DEFENDANT: Yes, I understand, your Honor.

19 THE COURT: I have been given a plea agreement, which  
20 I've marked as Exhibit 2. You told me a moment ago that you  
21 recalled signing the plea agreement. Mr. Javier, did you read  
22 the plea agreement before you signed it?

23 THE DEFENDANT: Yes, I have, your Honor.

24 THE COURT: And did you discuss the plea agreement  
25 with Mr. Prieston before you signed it?

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1                   THE DEFENDANT: Yes, I have, your Honor.

2                   THE COURT: Did you fully understand the agreement  
3 before you signed it?

4                   THE DEFENDANT: Yes, I do, your Honor.

5                   THE COURT: And does this agreement constitute your  
6 complete and total understanding of the entire agreement  
7 between you and the United States government as to this matter?

8                   THE DEFENDANT: Yes, it does, your Honor.

9                   THE COURT: Has anyone offered you any inducements or  
10 threatened you or forced you to plead guilty or to enter into  
11 this plea agreement?

12                  THE DEFENDANT: No, your Honor.

13                  THE COURT: You should understand that one provision  
14 of the plea agreement states that as long as I sentence you to  
15 108 months' imprisonment or less, you may not appeal your  
16 sentence or challenge the legality of your sentence at any time  
17 or for any reason. Do you understand that?

18                  THE DEFENDANT: Yes, I understand, your Honor.

19                  THE COURT: Mr. Prieston, do you know of any valid  
20 defense that would prevail at trial or any other reason why  
21 Mr. Javier should not be permitted to plead guilty today?

22                  MR. PRIESTON: No.

23                  THE COURT: And do you believe there's an adequate  
24 factual basis to support a guilty plea?

25                  MR. PRIESTON: Yes.

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1                   THE COURT: Does the government represent there's an  
2 adequate factual basis to support a guilty plea?

3                   MR. GENTILE: This is Dominic Gentile for the  
4 government. Yes, Judge, the government does make that  
5 representation.

6                   THE COURT: Mr. Javier, we've reached the point in the  
7 proceedings where I need you to tell me what you did that makes  
8 you believe that you're guilty of the lesser included offense  
9 of Count One.

10                  THE DEFENDANT: I -- I sold cocaine base to a  
11 undercover -- to a undercover detective. I was aware that it  
12 was an -- illegal drugs, and I was also aware that I did it in  
13 New York County.

14                  THE COURT: And Mr. Javier, did this take place at  
15 some point between April and November 2019?

16                  THE DEFENDANT: Yes, your Honor.

17                  THE COURT: And did it take place in the vicinity of  
18 northern Manhattan?

19                  THE DEFENDANT: Yes, your Honor.

20                  THE COURT: And Mr. Javier, were you also involved in  
21 the distribution of powder cocaine?

22                  THE DEFENDANT: Yes, your Honor.

23                  THE COURT: Mr. Gentile, do you wish me to ask any  
24 other questions of Mr. Javier?

25                  MR. GENTILE: Your Honor, this is Dominic Gentile.

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1 Yes, your Honor; if the defendant agreed with others to  
2 distribute that cocaine and the crack.

3 THE COURT: Yes. Mr. Javier, in connection with that  
4 distribution of cocaine base and cocaine that you've told us  
5 about --

6 THE DEFENDANT: Yes.

7 THE COURT: -- your distribution of the cocaine base  
8 and cocaine, was that pursuant to an agreement that you had  
9 with someone else, someone other than the undercover officer?

10 THE DEFENDANT: I only sold -- I only sold to a  
11 undercover detective myself.

12 THE COURT: Right. But were you working with someone  
13 to obtain the cocaine base and cocaine that you ended up  
14 selling to the undercover officer?

15 THE DEFENDANT: No, just myself, your Honor.

16 MR. PRIESTON: Could I have a second, your Honor.

17 THE COURT: Well, just let me ask one more question  
18 and then, Mr. Prieston, if it's necessary, you're more than  
19 welcome to speak to Mr. Javier.

20 MR. PRIESTON: Thank you.

21 THE COURT: What I was asking, Mr. Javier, is: Did  
22 you obtain the cocaine base and powder cocaine that you sold to  
23 the undercover officer, did you obtain those drugs from someone  
24 else who knew that you were going to be selling them to a third  
25 person?

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1           THE DEFENDANT: I don't understand that question.

2           THE COURT: Okay.

3           MR. PRIESTON: Did you get it -- if I could have a  
4 second.

5           Did you get the drugs from somebody else?

6           THE DEFENDANT: I mean --

7           MR. PRIESTON: And did that person --

8           THE DEFENDANT: Yeah, I got it from another place,  
9 yeah, I did.

10          MR. PRIESTON: And you knew that -- they knew that  
11 you'd be selling it, right?

12          THE DEFENDANT: Yeah.

13          MR. PRIESTON: And those people are part of the people  
14 charged in this case?

15          THE DEFENDANT: Nah. No.

16          THE COURT: So what we need you to understand,  
17 Mr. Javier, is that the charge that you're pleading guilty to  
18 is a conspiracy charge, so it requires that you had an  
19 agreement or understanding with somebody else to distribute the  
20 cocaine base and the powder cocaine, and so what Mr. Prieston  
21 was just asking you is: Did you obtain the cocaine base and  
22 the powder cocaine from somebody else? So that's Question  
23 No. 1. Did you get those drugs from somebody else?

24          THE DEFENDANT: Yeah, I did got it from somebody else,  
25 but it's nobody -- nobody from -- from -- from my indictment.

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1 I got it from somebody else around my neighborhood, and yes,  
2 that person knew I was gonna take it for myself, 'cause I  
3 was -- I was an addict, and also to sell it to -- to sell it to  
4 somebody else.

5 THE COURT: Okay. Mr. Gentile, anything else you want  
6 me to ask Mr. Javier?

7 MR. GENTILE: That's all. Thank you, Judge.

8 THE COURT: All right. Mr. Javier, are you pleading  
9 guilty because you are in fact guilty?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And are you pleading guilty voluntarily  
12 and of your own free will?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And I'll ask you, how do you plead as to  
15 the lesser included offense of Count One, guilty or not guilty?

16 THE DEFENDANT: Guilty.

17 THE COURT: Mr. Gentile, do you wish me to allocute  
18 Mr. Javier as to the forfeiture allegation?

19 MR. GENTILE: Your Honor, this is Dominic Gentile for  
20 the government. The government is not seeking forfeiture at  
21 this time, so no. Thank you, Judge.

22 THE COURT: All right. Mr. Javier, because you  
23 acknowledge you're guilty of the lesser included offense of  
24 Count One, because you find you know your rights and you're  
25 waiving them knowingly and voluntarily, and because I find your

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plea is entered knowingly and voluntarily and is supported by an independent basis in fact containing each of the essential elements of the offense, I accept your guilty plea and adjudge you guilty of the offense to which you have pled guilty.

I will order a presentence report. I ask you to cooperate with the people who prepare the report because it will be very important to me in making my decision as to what your sentence will be. You and Mr. Prieston will have an opportunity to review the presentence report before sentencing. I urge you to review it carefully with him and discuss it with him before sentencing. If there are any mistakes in the report, please point them out to Mr. Prieston so that he can point them out to me so that I don't proceed on the basis of mistaken information.

I am going to set sentencing for August 23rd at 12 noon. Does that date present any difficulties for anyone, August 23, 2021?

MR. PRIESTON: No, your Honor.

MR. GENTILE: No, your Honor. I'm sorry. What was the time you said?

THE COURT: August 23rd at 12 noon.

MR. GENTILE: Thank you, Judge.

THE COURT: Written submissions by the defendant are due on August 2, 2021, and any submission by the government is due on August 9, 2021.

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1                   Mr. Gentile, is there anything else for the  
2 government?

3                   MR. GENTILE: Nothing from the government, Judge.  
4 Thank you.

5                   THE COURT: And Mr. Prieston, anything else for the  
6 defense?

7                   MR. PRIESTON: No, thank you, your Honor.

8                   THE COURT: All right. Thank you, all. Good day.

9                   MR. PRIESTON: Bye-bye.

10                  MR. GENTILE: Thank you.

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